

SERVED: January 10, 2001

NTSB Order No. EA-4875

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 3rd day of January, 2001

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15592
v.)	
)	
WILLIAM RODERICK CANDIA, III,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge William E. Fowler, Jr., rendered in this proceeding on August 3, 1999, at the conclusion of an evidentiary hearing.¹ The law judge affirmed, by that decision, an order of the Administrator charging respondent with violations of sections 91.119(c), and 91.13(a) of the Federal Aviation Regulations

¹An excerpt from the hearing transcript containing the initial decision is attached.

("FAR," 14 C.F.R. Part 91).² For the reasons discussed below, the appeal will be denied and the 45-day suspension of respondent's airman certificate affirmed.³

The Administrator's March 31, 1999 Order of Suspension, as amended, alleges, among other things, the following facts and circumstances concerning the respondent:

1. You are the holder of Private Pilot Certificate Number 620076071.
2. On or about June 21, 1998, you operated a Cessna 150 aircraft, identification No. N63650 with a passenger onboard in the vicinity of Nokesville, Virginia.
3. During the flight you operated an aircraft over a residential neighborhood in Nokesville, Virginia, below an altitude of 500 feet above the highest obstacle within a horizontal radius of 2,000' of the aircraft.

²These regulations state as follows:

§ 91.119 Minimum safe altitudes: General.

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

* * * *

(c) *Over other than congested areas.* An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

§ 91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

³The Administrator filed a reply brief opposing the appeal. No appeal was taken from the law judge's dismissal of a charge that respondent's flight also violated FAR section 91.119(a) or his consequent reduction in sanction from a suspension of 60 days to one of 45 days.

The law judge's affirmance of the suspension order reflects a credibility choice in favor of a percipient witness who estimated, indirectly, that respondent, during one of three circling passes, flew over her house at an altitude of about 200 feet. The law judge did not credit the testimony of respondent, his passenger (respondent's brother), or his father (located on the ground in an adjacent property) to the effect that he did not fly closer than 500 feet.

On appeal, respondent does not identify any factor which would warrant overturning the law judge's credibility assessment.⁴ Specifically, we do not agree that the Administrator's witness' altitude estimate was deficient because she did not herself express it in terms of feet above the ground. She had no hesitancy in asserting that the Cessna passed over her and her house at about two and a half times the height of the surrounding trees, established to be around 80 to 85 feet. Nothing in this record suggests that such an estimate is any less reliable than those that rest on an observer's professed or presumed expertise in judging distances.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied;
2. The initial decision and the order of suspension are

⁴It is well-settled that a law judge's credibility determinations will not be disturbed, absent a showing that they were made in an arbitrary or capricious manner. Administrator v. Smith, 5 NTSB 1560, 1563 (1986). See also Administrator v. Klock, 6 NTSB 1530, 1531 (1989) (Law judge's credibility choice is "not vulnerable to reversal on appeal simply because respondent believes that more probable explanations...were put forth....").

affirmed; and

3. The 45-day suspension of respondent's pilot certificate shall begin 30 days after the service date indicated on this opinion and order.⁵

HALL, Acting Chairman, HAMMERSCHMIDT, GOGLIA, BLACK, and CARMODY, Members of the Board, concurred in the above opinion and order.

⁵For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration, pursuant to FAR section 61.19(f).